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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~494.~~ ~~873~~ 525

HENRY HAFFIN AND PHILIP WAGNER, PLAINTIFFS IN ERROR,

vs.

JOHN M. MASON, COLLECTOR, AND ABRAM HYATT, ASSESSOR OF INTERNAL REVENUE, ETC.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 25, 1871.

Dec Term 1872

SUPREME COURT OF THE UNITED STATES.

No. 494.

HENRY HAFFIN AND PHILIP WAGNER, PLAINTIFFS IN ERROR,

vs.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, *of* the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Henry Haffin and Phillip Wagner, plaintiffs, and John M. Mason and Abram Hyatt, defendants, a manifest error hath happened to the great damage of the said Henry Haffin and Phillip Wagner, plaintiffs, as is said, and as appe'rs by their complaint:

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices

2 of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December, in the year of our Lord one thousand eight hundred and seventy, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 15th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and the independence of the United States the ninety-fourth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second District.

The foregoing writ of error is allowed.
Dec. 15, 1869.

SAM. BLATCHFORD,
District Judge.

3 (Indorsed:) United States circuit court, southern district of New York. Henry Haffin and Phillip Wagner vs. John M. Mason & Abram Hyatt. Writ of error.

Service of copy of the within admitted.
Dec. 17, 1869.

EDWARDS PIERREPONT,
U. S. Att'y & Att'y for Def'ts.

Filed Dec. 15, 1869.

UNITED STATES OF AMERICA,
Southern Dist. of New York, ss:

4 I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York in the second circuit, do hereby certify that the return to the foregoing writ of error is contained in the following pages, numbered from one to 38, inclusive, and contains a true and complete transcript of the record and proceedings had in said court in the case of Henry Haffin & al. vs. John M. Mason & al., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 21st day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-fourth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-c't int. rev. stamp, canceled.]

5 Circuit court of the United States for the southern district of New York.

Pleas before the judges of the circuit court of the United States at the U. S. court buildings, No. 41 Chambers street, New York City, the 27th day of November, in the year one thousand eight hundred and sixty-nine, as yet of October term, one thousand eight hundred and sixty-nine.

Witness Samuel Blatchford, esq., judge.

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that, on the fifteenth day of October, as yet of October term, in the year of our Lord one thousand eight hundred and sixty-six, before the judge of the circuit court of the United States for the southern district of New York, at the U. S. court buildings, No. 41 Chambers street, came Henry Haffin and Phil'ip Wagner, by G. R. & T. D. Pelton, their attorneys, and bring into the said court before
6 the aforesaid justices thereof, now here, their certain declaration against John M. Mason and Abram Hyatt, being in custody, &c., of a plea of trespass on the case upon premises, which said declaration follows in these words, to wit:

United States circuit court for the southern district of New York, of October term, to wit, of *of* the fifteenth day of October, in the year of our Lord one thousand eight hundred & sixty-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

HENRY HAFFIN AND PHILIP WAGNER
against
JOHN M. MASON AND ABRAM HYATT.

Henry Haffen and Philip Wagner, plaintiffs in this action, by G. R. & S. D. Pelton, their attorneys, come here into court, and suggest and give the court now here to understand and be informed that, heretofore, to wit, on the thirteenth day of August last, an action was com-
7 menced in the supreme court, in the city and county of New York, according to the law of the State of New York, and the rules and practice of said court, in such cases made and provided, in favor and in the name of the said plaintiffs against the defendants hereinafter set forth.

That the defendants afterwards, by Samuel G. Courtney, esq., their attorney, duly appeared in said action, and such proceedings were had that, afterwards, and on or about the first day of October, in the year one thousand eight hundred and sixty-six, the said action was in due form of law removed by "writ of certiorari" for further prosecution and trial into this court according to the act of Congress in such case made and provided; and the clerk of the said Supreme Court did thereupon return

the said writ and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendants do not deny, but admit the same to be true. Therefore, let
8 the further proceedings and trial in this action against the defendants be continued in this court.

And the plaintiffs now according to law, by their attorneys aforesaid, complain of John M. Mason, one of the defendants herein, and who was at the time hereinafter mentioned, collector of United State' internal revenue for the tenth collection district of the State of New York, and Abram Hyatt the other of the defendants herein, and who was at the time hereinafter mentioned assessor for said district, duly appointed under and by virtue of the laws of the United States, in a plea of trespass.

For that whereas the said plaintiff, before and at the time of the committing the grievances hereinafter mentioned, were lawfully possessed of certain buildings and premises situate in the town of Morrisinia, in the county of Westchester, in the State of New York, and in said southern district of New York, which said buildings, premises, and appertenances were, for a long time before and until the commission of the
9 said grievances, used and occupied as a distillery and in and about which the said plaintiffs, before and until said time, carried on the trade and business of manufacturing, and distilling, and vending spirituous and other liquors, from which trade and business the plaintiffs derived large and increasing profit; yet the defendants, well knowing the premises, but contriving and wrongfully intending to injure the plaintiffs, heretofore to wit, on the thirteenth day of March, 1866, and on divers other days and times between that day and the day of commencing said action, wrongfully, unlawfully, and by force & arms broke and entered said building and premises, and then and there ejected, expelled, and removed the said plaintiffs, their servants and agents therefrom, and hindered and prevented the plaintiffs from using and occupying said building, premises, and appurtenances, and hindered and prevented them, the said plaintiffs, from carrying on the said trade and business, and kept and continued them, the said plaintiffs, their
10 agents and servants, from using and occupying said buildings and premises, and kept and prevented them, the said plaintiffs, from carrying on their said trade and business for a long space of time, to wit, from the said thirteenth day of March until the commencement of this action; whereby and in consequence of said wrongful acts of the defendants, the said plaintiffs, during all that time lost and were deprived of their said buildings, premises, and appurtenances, and whereby and in consequence of the premises, the said occupation, trade, and business of the plaintiffs was broken up and destroyed, and the profits and advantages accruing therefrom wholly lost to the plaintiffs. For that, also, whereas the said defendants, further contriving and wrongfully intending to injure the plaintiffs, heretofore to wit, on the aforesaid day, at Morrisiania aforesaid, with force and arms broke and entered the said build-
11 ings and premises of the plaintiffs' and there wrongfully and unlawfully and with force and arms seized and carried away from said buildings and premises and converted and disposed of to their own use the following goods and chattels, the property of the plaintiffs, to wit: Two steam-boilers, one steam-engine, one copper mash-cooler, seven mash boxes, one whiskey still and appurtenance complete, two mash tubs, three yeast tubs, two grain boxes, one malt tub, four receiving tubs, two donkey pumps, pipes and fixtures, three small donkey pumps, one hand pump, one corn mill, one malt mill, nine barrels of spirits, a lot of malt, fifteen bags of rye meal, twenty-one bags of corn-meal, four

hundred bushels of rye, three bags of barley malt, twenty-five
12 bushels of corn, one gas generator and receiver, one platform scales, twenty-three barrels, one wheelbarrow; which said goods and chattels were of great value, to wit, of the value of ten thousand six hundred and fifty-five dollars, and other *moneys* the defendants then and there did, to the damage of the plaintiffs in the sum of sixteen thousand dollars; and therefore the said plaintiffs bring this suit, &c.

G. R. & T. D. PELTON,
Plffs' Att'ys, 169 *Broadway, N. Y.*

U. S. circuit court for the southern district of New York.

JOHN M. MASON & ABRAM HYATT
ads.
HENRY HAFFIN & PHILIP WAGNER.

And the said John M. Mason and Abram Hyatt, defendants in this suit, by Samuel Courtney, their attorney, come and defend the
13 force and injury when, &c., and says that they are not guilty of the said supposed trespasses above laid to their charge or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him; and of this he, the said defendant, puts himself upon the country.

And the said plaintiffs doth the like.

Therefore, it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c., and that the defendant go without day; and it is further considered by the said court now here that the said defendant do recover against the said plaintiffs fifty dollars, for his costs and charges by him about his defence in this behalf laid out and expended, by the said court now here adjudged to the said defendant, and, with his assent, according to the form of the statute in such case made and provided, and that the said defendants have execution thereof, &c.

Judgment signed this 15th day of Dec., 1869.

R. E. STILWELL, *Dep. Clerk.*

14 (Indorsed:) Circuit court of the United States. Henry Haffin & Philip Wagner vs. John M. Mason & Abram Hyatt. Judgment record. For def'ts' costs $. Samuel G. Courtney, def'ts' att'y. Filed Dec. 15, '69.

15 U. S. circuit coutr, southern district of New York.

HENRY HAFFIN AND PHILIP WAGNER
vs.
JOHN M. MASON, ABRAM HYATT. } Bill of exceptions.

This action, being at issue upon the declaration and plea, was brought to trial and tried at a term of this court held at the city of New York, in the southern district of New York, before the Honorable Charles L. Benedict, judge, held in January, 1869, and the same was tried with a jury.

The plaintiffs' counsel, to maintain the issues on their part, gave evidence that, from the first of August, 1865, to the first of May, 1866, the defendant John M. Mason was collector of United States internal revenue for the tenth collection district of the State of New York, and the defendant Hyatt, during said period, was assessor of said district, both duly appointed under and by virtue of the laws of the

16 United States then in force, and known as the laws of the United States relating to internal revevenue, and that the plaintiffs were copartners, and as such, and from about the first day of September, 1855, to the first day of March, 1866, were engaged in distilling spirits at a distillery owned by them, and situated in the village of Morrisanna, in said collection district.

They gave further evidence that, from the time they, the said plaintiffs, commenced distilling as aforesaid, until the seizure and distraint hereinafter mentioned, they did, from day to day, make, or caused to be made, entries in a book kept by them for that purpose, of the number of gallons distilled by them, and also the number of gallons placed in warehouse, and also, the number sold or removed for consumption or sale, and the proof thereof; that said book was always open in the daytime, Sundays excepted, for the inspection of the said assessor, ass't assessor, collector, deputy collector, or inspector; that they rendered to said Hyatt, the said assessor, on the first, eleventh, and

17 twenty-first days of each and every month, while they were distilling as aforesaid, an account in duplicate, taken from their said book, of the number of gallons of spirits distilled by them, and also the number of gallons sold or removed for consumption or sale, and the proof thereof; that they also kept a book in form prescribed by the Commissioner of Internal Revenue, and which was open at all reasonable hours for inspection of said assessor or assistant assessor, collector and deputy collector, and inspector of said district, wherein was entered, from day to day, the quantity of grain and other vegetable productions, or other substances, put into the mash-tub by them or by their agent or superintendant, for the purpose of producing spirits; and that they verified or caused to be verified the said entries, books, and accounts by oath, before a competent officer, according to form required by law, and they immediately, upon the making out of said accounts respectively, forwarded to the defendant Mason, collector as aforesaid, duplicates thereof; and, at the times of rendering such

18 duplicates respectively, and until the first of January, 1866, paid to the defendant Mason, the said collector, the duties or tax imposed by said laws upon the spirits distilled by them, and mentioned in said accounts After the first of January and until the seizure or distraint hereinafter mentioned, the said Mason changed the mode and times of collections, and, instead of collecting upon the receipt by him of the duplicate statements, rendered by the plaintiffs as aforesaid, waited until he received the monthly lists or returns from the defendant Hyatt, the assessor. These monthly lists were made by the said assessor from the tri-monthly statements of spirits distilled by the plaintiffs and rendered by them to the said assessor on the first, eleventh, and twenty-first days of each month as aforesaid; were aggregates of such statements, and were regularly made and delivered to the said collector until the first of March, 1866, or as long as the plaintiffs continued the business of distilling. The defendant Mason collected

19 from the plaintiffs all the taxes or duties imposed by law upon all the spirits mentioned in said lists, and in the statement made by him by the plaintiffs as aforesaid.

The plaintiff Wagner testified that the taxes upon spirits manufactured by the plaintiffs previous to the distraint had all been paid.

No objection was ever made by either of the defendants to the statements or returns so made by the plaintiffs.

On the day of March, 1866, the defendant Hyatt made a list, of which the following is a copy.

20 No. 23.—*Special alphabetical list of persons in division No.* 1, *of collection district No.* 10*th, of the State of New York, liable to a tax under the excise laws of the United States, and the amount thereof, as asse'ed by , assistant assessor, and by Abram Hyatt, assessor, returned to the collector of said for the month of March,* 1866.

[Assessors must be particular to fill all the blanks in this form as far as practicable, and to number all articles and occupation' upon which taxes are assessed, to correspond with the entry in the abstract.]

No. of line.	Name.	Location and post office address.	Article or occupation.	No. in abstract.	Quantity or valuation.	Rate of tax.	Amount of tax upon particular articles.	Total.	Date of payment.
1					*Galls.*				
2									
3									
4									
5									
6	Haffen & Wagner	Morrisiana, P. O.; same ..... This tax is on deficiency on returns for the months of Sept'r, Oct., Nov., and Dec., 1865, and Jan'y and Feb'y, 1866.	Distilled spirits	41	17,715	$2	.....	$35,430 00	
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24								35,430 00	

I, Abram Hyatt, assessor for the tenth collection district of the State of New York, hereby certify that I have this day delivered to John M. Mason, esq., collector for the same district, an alphabetical list of taxes assessed within said district, for the month of March, 1866, as a special list, amounting to thirty-five thousand four hundred and thirty dollars.

A. HYATT, *Assessor.*

$35,430.]

21 The defendant Hyatt, in answer to the question whether he had anything before him which induced him to make the list, replied that he had, but did not state what it was. He further testified that, before making the said list, he gave the plaintiff no notice of the increased enumeration, and he took no steps to give them notice of his action. Hyatt was asked whether the plaintiff paid the tax on all spirits made by them down to March, 1866, and replied that he did not know that they had, but that he never heard to the contrary.

This list was sent by the defendant Hyatt to the defendant Mason, who received it on the 30th day of March, 1866, and made a demand for the payment of the tax therein mentioned, upon some person found in the plaintiff's distillery, which was refused, and thereupon he distrained upon the plaintiffs' distillery, and other property belonging to the plaintiffs, and of about the value of fourteen thousand dollars, made an inventory thereof, advertised the same for sale, and sold the
22 same at auction on the 18th day of April, 1866. The plaintiffs were present at the sale and protested against it.

The defendant Hyatt testified that, after the sale of the property by the defendant Mason, he made an examination of the plaintiffs, touching the amount of spirits distilled by them; that, for the purposes of such examination, he summoned the plaintiffs and witnesses before him, but did not examine the plaintiffs' premises.

The plaintiffs' counsel asked the said Hyatt the following question: "Did you, upon such examination, find that any spirits had been manufactured by the plaintiffs upon which they had not paid the tax, or that they had had any spirits not manufactured by them which were subject to a tax?"

(The question was objected to, and answer excluded by the court, and the plaintiffs' counsel duly excepted.)

The court, upon offer by plaintiffs' counsel, refused to permit the plaintiffs to show the result of such examination, and the plaintiffs duly excepted.

23 The plaintiffs' counsel requested the court to charge that the defendants were liable in this action, and that the plaintiffs were entitled to judgment for the value of the property seized and sold by the defendant Mason as aforesaid.

The court refused so to charge, and the plaintiffs' counsel duly excepted.

The court thereupon directed the jury to find for the defendants; to which direction the plaintiffs' counsel duly excepted.

The jury thereupon found a verdict for the defendants; and, because the said exceptions do not appear by the record of said issue and trial, the said judge who tried the cause on the prayer of the plaintiffs, has set to the bill of exceptions his seal, this second day of October, 1869.

CHA'S L. BENEDICT.

24

25

26 (Indorsed:) U. S. circuit court, southern district of New York. Henry Haffin and Philip Wagner vs. John M. Mason & Abram Hyatt. Bill of exceptions. G. R. & J. D. Pelton.

We consent to the within bill of exceptions, and that it be submitted to Judge Benedict for settlement.

27 Supreme Court of the United States.

HENRY HAFFIN & PHILIP WAGNER
v.
JOHN M. MASON & ABRAM HYATT. } In error.

Of December term, 1870.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said Henry Haffin and Philip Wagner, by G. R. & T. D. Pelton, their attorneys, and say that in the record and proceedings aforesaid, there is manifest error, in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid given was given for the said John M. Mason and Abram Hyatt
28 against the said Henry Haffin and Phillip Wagner, whereas, by the law of the land, the said judgment ought to have been given for the said Henry Haffin and Philip Wagner against the said John M. Mason and Abram Hyatt; and the said Henry Haffin and Phillip Wagner pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they be restored to all things which they have lost by occasion of the said judgm't, &c.

G. R. & T. D. PELTON,
Pl'ff's' Attorneys.

(Endorsed:) Supreme Court of the United States. Henry Haffin, & Phillip Wagner v. John M. Mason & Abram Hyatt. Assig'm't of errors. G. R. & T. D. Pelton, pl'ffs' atty's, 167 Broadway, N. Y. Filed Dec. 15, 1869.

29 Supreme Court of the United States.

HENRY HAFFIN & PHILLIP WAGNER
vs.
JOHN M. MASON & ABRAM HYATT. } In error.

And the said John M. Mason and Abram Hyatt, by Edwards Pierrepont, their attorney, hereby come here into court and say there is no error either in the records or proceedings aforesaid, nor in the giving of the judgment aforesaid, and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgm't aforesaid, in form aforesaid given, may, in all things, be affirmed, &c.

EDWARDS PIERREPONT,
Att'y for Def'ts in Error.

30 (Endorsed:) Supreme Court of the United States. Henry Haffin & Phillip Wagner vs. John M. Mason & Abram Hyatt. Joinder in error. Filed Dec. 15, 1869.

31 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

HENRY HAFFIN AND PHILLIP WAGNER
ag'st
JOHN M. MASON AND ABRAM HYATT.

Know all men by these presents that we, Joseph Tausig and Frederick Denig, both of the city, county, and State of New York, are held and firmly bound unto the above named the said John M. Mason and Abram Hyatt, in the sum of two hundred and fifty dollars, to be paid to the said John M. Mason and Abram Hyatt; for the payment of which well and truly to be paid, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 9th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

32 Whereas the above-named Henry Haffin and Phillip Wagner have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Henry Haffin and Phillip Wagner shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. TAUSSIG. [L. S.]
FREDERICK DENIG. [L. S.]

Sealed, delivered, and taken and acknowledge' this 9th day of December, 1869.

[L. S.] DAVID THORNTON,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Joseph Tausig and Frederick Denig, being duly sworn, deposes
33 and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts & liabilities. Sworn to this 9th day of December, A. D. 1869.

J. TEUSSIG,
FREDERICK DENIG.

Before me—

DAVID THORTON,
Notary Public.

The above sureties are sufficient, and all exceptions to them is waived.

EDWARDS PIERREPONT,
U. S. Att'y.

The foregoing bond is approved as to its form and amount & the sufficiency of the sureties.
Dec. 15, 1869.

SAMUEL BLATCHFORD,
District Judge.

34 (Indorsed:) United States circuit court, southern district of New York. Henry Haffin and Philip Wagner ag'st John M. Mason and Abram Hyatt. Bond for costs. Filed Dec. 15, '69.

35 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit. To John M. Mason and Abram Hyatt.

Whereas there was lately issued out of the circuit court of the United States a writ of error directed to the judges of said circuit court of the United States for the southern district of New York, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Henry Haffin and Philip Wagner, plaintiffs, and John M. Mason and Abram Hyatt, defendants, a manifest error hath happened, to the great damage of the said Henry Haffin and Phillip Wagner:

And whereas for the correction of that error in due manner the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States to be held at the city of Washington
36 on the first Monday of December, in the year of our Lord one thousand eight hundred and seventy:

You are therefore cited to appear before the said Supreme Court at the city of Washington, on the said first Monday of December, in the year of our Lord one thousand eight hundred and seventy, to do and receive what may appertain to justice in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 15th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

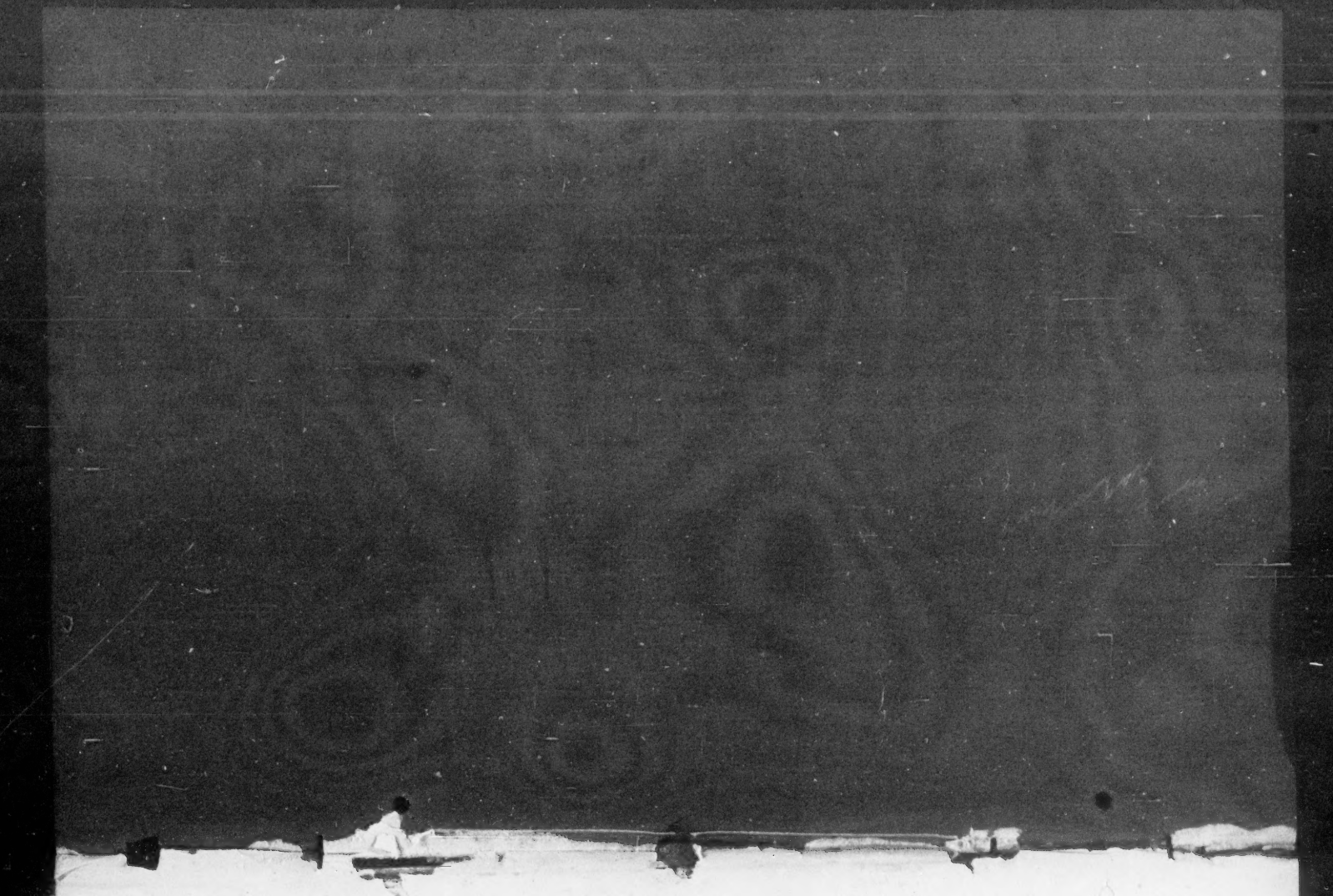
SAM'L BLATCHFORD,
District Judge.

37

38 (Indorsed:) Service of copy within admitted Dec. 17, 1869.
EDWARDS PIERREPONT,
U. S. Att'y & Att'y for Deft's.

Filed Dec. 15, '69.

(Indorsement on cover:) No. 494. Henry Haffin and Phillip Wagner, plaintiffs in error, vs. John M. Mason, collector, and Abram Hyatt, assessor of internal revenue, &c. S. New York C. C. U. S. Filed 25th January, 1871.





Supreme Court of the United States.

HENRY HAFFIN and PHILIP WAGNER,
Plaintiffs in Error,

vs.

JOHN M. MASON, Collector, and ABRAM HYATT, Assessor of Internal Revenue, etc.

ARGUMENT FOR PLAINTIFFS, IN ERROR.

Wm. J. Read, Law and Job Printer, 116 Fulton Street, New York.

Supreme Court

OF THE UNITED STATES.

Henry Haffin and Philip Wagner, Plaintiffs in Error,

v.

John M. Mason, Collector, and Abram Hyatt, Assessor of Internal Revenue.

In Error to the Circuit Court of the United States for the Southern District of New York.

ARGUMENT AND BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiffs complain of the defendants in a plea of trespass, to wit: that they in March, 1866, entered the building of the plaintiff, being a distillery, and took, carried away and disposed of certain property of the plaintiffs described in the declaration.

PLEA—GENERAL ISSUE.

FACTS.

1. The defendant Mason, was Collector, and defendant Hyatt, Assessor for the Tenth Internal Revenue Collection District of the State of New York, at the times of the acts complained of in the declaration (page 4 of Record).

2. The plaintiffs were the owners of a distillery situated in said District, at which they engaged in distilling spirits, from the first of September, 1865, to the first of March, 1866 (p. 5 of Record).

3. During the said period, and so long as they continued the business of distilling, the plaintiffs kept books, and made verified returns to the defendants, Collector and Assessor, of all the spirits distilled by them, and otherwise conducted their business strictly in conformity to the laws relating to the duties and obligations of distillers (p. 5).

Compare evidence with Sec. 57 *of Internal Revenue Laws of June* 30, 1864, *in force, March*, 1866.

4. Until the first of January, 1866, the plaintiffs paid to the Collector the taxes upon all spirits mentioned in the returns made by them at the times respectively of making the same; and after the first of January and until the plaintiffs ceased distilling, the defendant Hyatt, made from the *tri*-monthly returns rendered to him by the plaintiff, monthly lists or statements, which monthly lists he delivered to the defendant Mason, who "collected from the plaintiffs *all* the *taxes* or duties imposed "by law upon all the spirits mentioned in said lists and "in the statements made to him by the plaintiffs as "aforesaid;" the last mentioned statements being duplicates of the tri-monthly returns made to the Assessor, Hyatt (p. 5).

5. It appears from uncontradicted testimony, that the defendant Mason, collected from the plaintiffs *all* the taxes or duties upon *all* the spirits mentioned in said lists, and in the statements made to him by the plaintiffs, as aforesaid (p. 5, fol. 19).

NOTE.—These verified statements mentioned *all* the spirits distilled by the plaintiffs while they were engaged in distilling.

2. It nowhere appears that any of the returns, accounts or statements rendered by the plaintiffs to the defendants, as stated in the record, were false or erroneous, or that they committed any fraud, or that there were any spirits distilled by them upon which they had not paid the legal tax, or that they had failed to pay any tax imposed upon them by law.

6. On the day of March, 1866, the defendant Hyatt, *without notice to the plaintiffs of increased enumeration or other notice* of his action, made a *list*, as appears at page 6 of the record, called a "Tax on deficiency in "returns for the months of Sept., Oct., Nov., Dec., 1865, "and Jan. and Feb., 1866," of 17,715 gallons distilled spirits, amounting to $35,430, and bearing the certificate of said Hyatt, that he delivered to the defendant, Collector Mason, "An alphabetical list of taxes assessed within "said district, for the month of March, 1866, as a special "list, amounting to thirty-five thousand four hundred "and thirty dollars" (p. 5–7).

7. This list the defendant Hyatt gave to the collector, defendant Mason, who, on the 30th day of March, 1866, demanded the amount therein mentioned, and thereon seized the distillery and other property belonging to the plaintiffs, advertised the same for sale, and sold the same on the 18th day of April, 1866, the plaintiffs protesting against it (p. 7).

8. After the sale of the property the defendant Hyatt made an examination of the plaintiffs, touching the amount of spirits distilled by them.

Errors (see p. 7 of Record.)

1. The refusal of the Court to charge, "That the "defendants were liable in this action, and "that the plaintiffs were entitled to judgment "for the value of the property seized and "sold by defendant Mason."

2. "The direction of the Court to the jury to "find for the defendants."

3. The exclusion by the Court of the answer to the following question to defendant Hyatt: "Did you upon such examination find that "any spirits had been manufactured by the "plaintiffs upon which they had not paid the "tax, or that they had any spirits not manu-"factured by them which were subject to a "tax."?

4. The refusal of the Court "to permit the "plaintiffs to show the result of such examin-"ation" (meaning their examination by the assessor).

POINTS.

First.—There was error in the refusal of the Court to instruct the jury that plaintiffs were entitled to judgment, and in the direction to find a verdict for the defendants.

Second.—The only warrant that the defendant

Mason had for making the distraint—seizing and selling the property—was the "list" (page 6) given him by the defendant Hyatt. In this "list" he must find justification, or he is a trespasser.

In looking for such justification he cannot be aided by presumptions.

The invasion of the plaintiffs' premises, the forcible seizure of their property, the divestment of their title, and the transfer of it to others, were acts in derogation of the common law.

Therefore no presumption can arise from the official character of the defendants, and no legal execution of their powers is to be made out by intendment.

Sharp v. *Spier*, 4 *Hill*, 76.
Stryker v. *Kelly*, 2 *Den.*, 594.
Adams v. *S. & U. R. R. Co.*, 6 *Seld.*, 328.
Sherwood v. *Reade*, 7 *Hill*, 431.

(*a*) The list was Mason's precept or execution, but it affords him no protection, unless Hyatt had the power to make it, or unless he possessed the power to charge the plaintiffs with a "tax on de-"ficiency on returns of distilled spirits," for months previous to the time of making the charge.

Clark v. *Hallock*, 16 *Wend.*, 607.
Castellanos v. *Jones*, 1 *Seld.*, 164, 170.
Duncan v. *Darst*, 17 *Pet.*, 204.

(*b*) The power of an assessor being special and limited by statute, the burden is upon the defendants to show legal authority for making the list, or to impose a tax.

Williams v. *Peyton*, 4 *Wheat.*, 77.
Adkins v. *Brewer*, 3 *Cow.*, 206.
Bowman v. *Reiss*, 6 " 234.
Niles v. *Martin*, 19 *Johns.*, 7, 33.
Morgan v. *Dyer*, 10 " 161.

Third.—The official powers of the defendants were created by the statutes known as "The U. S. Internal Revenue Laws," passed June 30th, 1864.

The authority to make the list, and the justification, if any, for committing the acts complained of, must be found within those laws.

I. These statutes, so far as they operate to take away the rights of the citizen, must be construed strictly.

They cannot have an equitable construction, nor be extended by implication. Every substantial requisite of the law must be shown to have been complied with. That no presumption can be raised in behalf of a collector who sells property for taxes, to cover any radical defect in the proceedings. See

Ronkerdorf v. *Taylor*, 4 *Pet.*, 349, 358.
Bentz v. *Knowler*, " " 152.
Parker v. *Rule*, 9 *Cranch.*, 308, 311.
Williams v. *Peyton*, 4 *Wheat.*, 77, *supra.*

Fourth.—There was no authority for making the list, and it was wholly void. The statutes in force in March, 1866, were enacted June 30, 1864. Sect. 55 prescribes the tax to be paid upon spirits that may be distilled *and* sold, or distilled *and* removed for consumption or sale. Sect. 58 imposes and regulates the duties of distillers in keeping books, making returns to collector and assessor, &c., (duties performed in this case). Sect. 58[illegible]9 provides for an inspector, who shall inspect all spirits distilled before the same are removed to a bonded warehouse, and make returns of the amount thereof to the collector and assessor.

I. As will be seen from Sect. 57, the assessor is not required to return any list to the collector, but the

latter collects the tax (which is specific) when the distiller makes returns to *him*. He may compare such return with the duplicate made to the assessor, and with the return of the inspector, but he acts upon the return to *him*. The duty of making duplicate returns to the assessor is evidently intended as a check upon the distiller, and not to enable the assessor to make lists for the use of the collector. Other sections authorize the assessor to make lists, but they relate to annual lists, or lists made after appeal, and have no reference to distilled spirits, (except Sect. 14.)

See Sections 12 *and* 20.

II.—The only possible authority for making the list in question must be found in *Sec.* 14, and it is under this section, if any, that the defendant Hyatt professed to act.

This section, so far as it relates to distillers, provided—

"That if any person shall not deliver a monthly or
"*other* list or return without notice at the time re-
"quired by law, or if any person shall deliver or
"disclose to any assessor or assistant assessor any
"list or statement which, in their opinion, is false or
"fraudulent, or contains any understatement or
"undervaluation, it shall be lawful for the asses-
"sor to summon such person, or his agent, &c., to
"appear before him to give testimony, &c., re-
"specting any objects liable to duty, or a tax, or
"the lists, statements or returns thereof, or any
"trade, business or profession liable to any tax or
"license, as aforesaid, * * * * *
"It shall be the duty of the assessor, or
"assistant assessor, of the district within which
"*such* person *shall have* taxable property, to
"enter into and upon the premises, if it be
"necessary, of *such* person so *refusing* or neglect-
"ing or rendering a false or fraudulent list or re-
"turn, and to make from the best information he

"can obtain * * * * such list or return, "according to the form prescribed, of the prop- "erty, goods, wares and merchandize, and all arti- "cles or objects liable to duty or tax, *owned or* "*possessed*, or under the care or management of "*such person.*"

(*a*) We insist that two things were here required of the assessor, before he could invest the collector with any power to make any seizure, and that neither of them were performed.

1. If he suspect impropriety of any sort in the return, "*it shall be lawful* * * * * to summon such person," &c., &c., that is to say: He may investigate—How? Arbitrarily! Inquisitorially! Without notice! Playing the part of *detective*, *prosecutor* and *judge!* Not so unjustly as that, for it would be so clearly against the policy of all jurisprudence that such a construction should ever be adopted except upon the clearest, possible proofs.

And such evidences do not exist here, to say the least. How then? By summons! By due process of law! By something akin to judicial investigation, so that the citizen may be fairly heard, and know what the evidence against him consists of, if an adverse determination is made.

In this way, *and in this way only*, is the return to be condemned as false, fraudulent, &c.

Observe—"It is lawful" to arrive at such a *judgment* in this way. Is any other way provided? Any other mode would be simply *guessing* at it.

Observe, again—The most serious consequences follow to the citizen if the determination is not made in this way. (1) Some have

been already intimated. (2) It is aimed at the seizure of his property "without due process of law." (3) It involves a determination against the truthfulness of the return, which implies not only forfeiture but positive criminality, and all without a hearing.

Hence, the first condition precedent, something like a judicial determination must be reached; and there is but one way in which it is "*lawful*" to do it.

2. The next step is a *duty*. Mandatory words are used; the others are permissive only—"it shall be the duty," &c., to enter upon the premises of such person. What person? The one whose return is simply *suspected!* By no means. The premises of the person so refusing, neglecting or rendering a false or fraudulent return, *i. e.*, the return is here no longer treated as under suspicion! It is spoken of as false, fraudulent, *in fact*. Very clearly this determination of the fact, in this only lawful way, is referred to or implied. is to be taken

Observe, this step only in case it be "necessary." Pray, how would the necessity be avoided except through or by means of the investigation previously provided for? The whole extent of the error or wrong must be ascertained as an incident to the judgment of condemnation of the return.

The whole structure of the section looks to a summary judicial determination of the fact of error or fraud upon a fair hearing; then to the perfecting of the judgment by ascertaining the extent of the fraud, and finally to the execution, by delivering the adjudication to the executive officer. Such a determination, made in this "lawful" way, lies

at the basis of the whole remedy. It is jurisdictional—a condition precedent.

If this reasoning is correct, the collector's authority to seize was absolutely void, because no such or any determination was made, and the case does not even pretend it.

(*b*) Even after such examination and determination the list of the assessor must be limited to goods, wares, &c., *owned* or *possessed*, or under the care or management of such person, or *which he shall have* (not *shall have had*) *at the time of making the investigation.*

The assessor had no jurisdiction over the taxable goods which tax payer *had* owned or possessed previous to making the list, or to enter upon a list the amount of tax for which he *would have been liable* at some time in past.

Other sections provide for such cases.

See Sections 15, 58, 70, *&c.*

(*c*) So obvious is the above proposition that Congress, on the 13th day of July, 1866, conferred upon the assessor the power, "in case "it shall be ascertained, that any list which "shall be delivered to any collector is imper- "fect, in consequence of omission, und r- "statement, undervaluation, or false or fraudu- "lent statement contained in any returns, &c., "*within fifteen months* from the time of the "delivery of the list to the collector, as afore- "said, to enter on any monthly or special list "the names of such persons so omitted "* * * * * together with the "amount of the tax for which they may have "become liable, &c."

Sect. 9 *Laws, July* 13*th*, 1866.

The defendant Hyatt anticipated the will of Congress by four months, and made a law for himself.

III.--But it does not appear that Hyatt ever adopted Sect. 14 as a guide; for by the terms of that section it is his duty, if he made a list, to add, in case of neglect 50 *per centum* to the duty, and in case of fraud 100 per centum, except in case of sickness or absence, when he was to give the tax-payer further time, &c. (*See Sect.* 59.)

Neither was done in this case.

Fourth.—The plaintiff, having made his tri-monthly returns as provided by law, and the assessor having received them without objection, and (after Jan. 1st) made new monthly lists therefrom, and transmitted them to the collector, and the collector having collected the taxes upon the spitits mentioned in said returns and lists, the assessor's power was spent. He had no power to make further lists or impose a further tax.

(*a*) The statute does not confer upon the assessor the power to make repeated lists, and to retax the tax-payer.

If he can exercise this power at any time after he has transmitted the list to the collector, he may for ten years after, and if he may once, he may as many times as his will may dictate.

The tax-payer would thus be at the mercy of the assessor, and at the same time subject to the pains and penalties provided, in other parts of the laws, for making fraudulent returns, &c.

That the powers conferred upon assessors by Sect. 14, can only be exercised *prior* to making assessments on returns, and that the assessor is *functus*

officio as to the lists or returns given or made to the collector.

See opinion of Judge SMALLEY, *in the matter of Thomas Brown; Northern District of New York, April* 6, 1866; *Internal Revenue Record page* 134.

See further, Sect. 9, *Laws July*, 1866, *supra, where powers of the class exercised by Hyatt, were conferred only by legislation.*

(*b*) "Whenever a special jurisdiction has once executed the power with which it was invested, "that power is at an end, as to the subject in "relation to which it has been executed."

Ex parte Randolph, 2 *Brockenbrough's Decisions of C. J. Marshall*, 447.

It was there held, that assessors having once valued the property subject to a tax, their powers were at end. They could not alter nor change the valuation.

See Child v. *Adam*, 1 *Fisher*, 193.

Fifth.—This list was not only irregular, but it was void on its face.

I. It is not made in form prescribed by law.

II. It mentions no property subject to a tax.

It hardly purports to be an assessment upon "distilled spirits," but upon "deficiency on returns" of distilled spirits. There is no tax known to the law "on deficiency on returns," nor does a person permitting such deficiency thereby subject himself to a tax.

(*a*) The inference, created by the list is, that the

plaintiffs had failed to make returns in the manner prescribed by the law of 17,715 gallons of spirits distilled by them.

But if the inference is correct, it does not follow that they had not paid the taxes on that quantity.

Returns of quantity were made by the inspector (Sect. 59), who, as a public officer, is presumed to do his duty, and the collector was required to collect the taxes upon spirits *so* returned.

NOTE.—The object of those various returns was to enable the collector to ascertain the quantity of spirits distilled; but when the distiller had once paid the tax upon the spirits distilled by him (with or without a return), his duty, so far as payment of the tax was concerned, was at an end.

(*b*) It should be noted that there was no pretence that the plaintiffs had failed to pay all the taxes upon the spirits made by them; upon the other hand, Hyatt says, he did not know whether they had paid all the taxes, "*but he had never paid to the contrary.*"

See Record, p. 7.

III.—There was no tax on "distilled spirits" as such.

The only tax imposed was upon spirits "distilled *and* sold or *removed* for consumption or sale" (Sect 55).

Assuming, then, that the plaintiffs had in their possession 17,715 gallons "distilled spirits," it nowhere appears that such spirits were ripe for assessment, or that the collector had any right to collect a tax upon them.

IV.—Giving the list the most favorable construction that the defendants can claim for it, and it

only amounts to an information to the collector that the plaintiff at some time in the past had (not' failed to pay their taxes), but had failed to make returns of 17,715 gallons of spirits distilled by them.

Such information did not authorize a distraint.

Sixth.—As appears from the record, the plaintiffs made all returns that they were required to make, and paid all the taxes imposed by law.

Notwithstanding this full compliance with the law, the defendant Hyatt, without examination or knowledge, so far as appears, made the list in question, and the defendant Mason, upon such list, demanded the payment of $35,430, and then made the distraint.

The defendants clearly ought to have been required to show that they did not pursue their destructive course merely from caprice, but that they had *some* grounds for their action.

The plaintiffs should at least have been permitted to show by the defendant Hyatt himself, that upon examination he could find no violation of the laws or other delinquency.

The Court, in excluding the proffered testimony (Record, p. 7) erred.

Seventh.—The statute (urged below) requiring an appeal to the Commissioner of Internal Revenue before suit for the recovery of any *tax*, &c., has no application in actions for *trespass*.

Besides that statute was not enacted until after the distraint.

(*See Sect.* 19, *Act of July* 13, 1866.)

Eighth.—Both defendants are liable for the trespass.

Smith v. *Shaw*, 12 *Johns.*, 257.

Ninth.—The plaintiffs are wholly without remedy for the obvious wrong done them, unless this Court awards them a further trial, which, we submit, should be granted.

Respectfully submitted.

J. HUBLEY ASHTON.

Counsel for Plaintiffs in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

HENRY HAFFIN AND ANOTHER
vs.
JOHN M. MASON AND ANOTHER. } No. 525.

BRIEF FOR THE DEFENDANTS IN ERROR.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

HENRY HAFFIN AND ANOTHER
vs.
JOHN M. MASON AND ANOTHER. } No. 525.

BRIEF FOR THE DEFENDANTS IN ERROR.

STATEMENT.

This was an action of trespass brought by the plaintiffs in error, in the year 1866, against the defendants in error, then serving as collector and assessor of internal revenue, for an alleged seizure by the latter of certain goods and chattels belonging to the former.

The declaration set forth that the plaintiffs were lawfully possessed of certain buildings and premises in the town of Morrisania, New York, which were used and occupied as a distillery, and in and about which they carried on the business of distilling, &c., and charged that the defendants, theretofore, to wit, on the 13th of March, 1866, and on divers other days and times since, &c., with force and arms broke and entered the said buildings and premises, and seized and carried away two steam boilers, one steam engine, and other property, of great value, to the damage of the plain-

tiffs, &c. Defendants pleaded the general issue, and plaintiffs joined. The jury found for the defendants, and judgment was rendered in their favor December 15, 1869.

The plaintiffs took a bill of exceptions, and have brought the case here on a writ of error.

THE EXCEPTIONS.

It appears that the defendant, Hyatt, who was the district assessor, made a special list for the month of March, 1866, in which the plaintiffs were assessed with a tax "on deficiency on returns for the months of September, October, November, and December, 1865, and January and February, 1866," being 17,715 gallons of distilled spirits. This list was sent by him to the defendant, Mason, who was collector of the district, and who received it on the 30th of March, 1866. Demand was made by Mason for payment of the tax, which being refused, he distrained plaintiffs' property, advertised it for sale, and sold it at auction on the 18th of April, 1866. (Record, pp. 5, 6, 7.)

Hyatt having testified that, after the sale of the property by Mason, he made an examination of the plaintiffs, touching the amount of spirits distilled by them, and that, for the purposes of such examination, he summoned the plaintiffs and witnesses before him, but did not examine the plaintiffs' premises. Plaintiffs' counsel asked him the following question:

"Did you, upon such examination, find that any spirits had been manufactured by the plaintiffs upon which they had not paid the tax, or that they had any spirits not manufactured by them which were subject to a tax?"

The question was objected to, and answer excluded by the court; to which plaintiffs' counsel excepted. (Record, p. 7.) This constitutes the first exception.

The court also refused to permit the plaintiffs to show the result of such examination; to which plaintiffs' counsel duly excepted. This is the second exception.

The court, upon being requested to charge that the defendants were liable in this action, and that the plaintiffs were entitled to judgment for the value of the property seized and sold by the defendant, Mason, as aforesaid, refused to so charge; to which plaintiffs' counsel excepted. This is the third exception.

The court thereupon directed the jury to find for the defendants; to which plaintiffs' counsel excepted. This is the fourth and last exception.

ARGUMENT.

1. With regard to the first exception. It is very clear that the question put by plaintiffs' counsel to Hyatt, respecting the examination made by the latter, after the sale, touching the amount of spirits distilled by plaintiffs, was not pertinent to the issue, and that the answer, whatever it might have been, was properly excluded. If the seizure of the property, which was sold on the 18th of April, was the trespass complained of, evidence of what transpired subsequent to that date would seem to have been inadmissible on the ground of irrelevancy.

2. The second exception is not sustainable, for the reason just stated.

3. The third exception is to the refusal of the court to charge, as requested by plaintiffs' counsel, that the defendants were liable in this action, &c.

That trespass will not lie against a *collector* of internal revenue, under circumstances such as are presented by the record in this case, was expressly stated in the opinion in the case of Erskine *vs.* Hohnbach, decided at last term. Whether the action will lie against an assessor, is immaterial, so far as this charge is concerned. For, unless, *both* were liable, the charge, as prayed, is incorrect; and a party cannot assign for error the refusal of an instruction to which he has not a right to the full extent as stated. The court is not bound to give a modified instruction varying from the one prayed.

Cotts *vs.* Phalen, 2 How., 382.

Buck *vs.* Chesapeake Insurance Co., 1 Pet., 159.

It does not appear that the defendant Hyatt's action was in any respect illegal. By section 14 of the act of June 30, 1864, (13 Statutes at Large, 226, 227,) he is authorized (but not required) to summon any person before him whom he suspects of making a false or fraudulent return to him, and it is his duty to enter upon the premises and make an examination, *if it be necessary*, of which he must judge. The omission to do either of these does not make an assessment illegal and void. So far as the exceptions show, the judgment below was correct.

No exception was taken below to the sufficiency and correctness of the list sent by the assessor to the collector, nor was it, so far as appears, called in question.

G. H. WILLIAMS,
Attorney General.
C. H. HILL,
Assistant Attorney General.

